

## **REMARKS**

### ***Status of the Claims***

The pending Office Action addresses claims 1, 4-10, and 13-25, however claims 7-10 and 20-21 are withdrawn from consideration. Remaining claims 1, 4-6, 13-19, and 22-25 stand rejected.

### ***Amendments to the Specification***

Paragraph [0048] is amended to correct spelling and grammatical errors. No new matter is added.

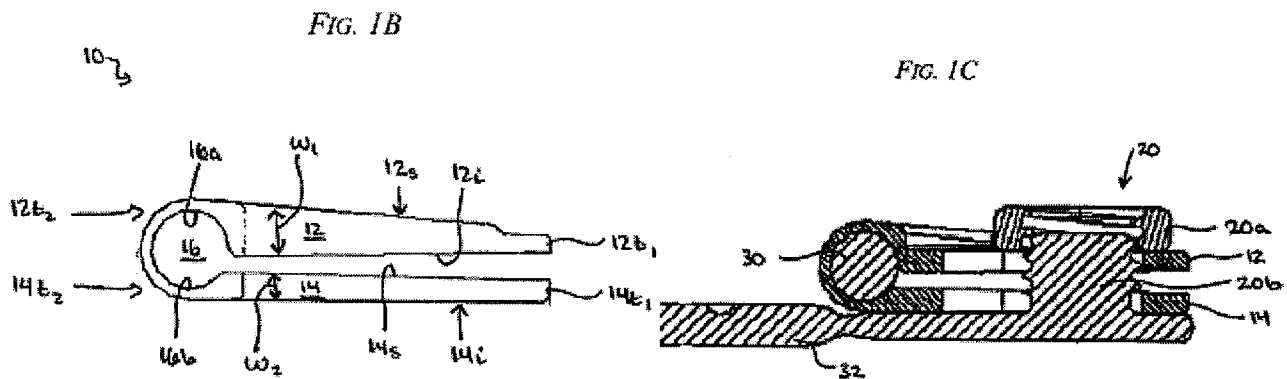
### ***Rejections Pursuant to 35 U.S.C. § 112***

Claims 1 and 23 are rejected pursuant to 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Specifically, the Examiner argues on page 2 of the Office Action that “[t]he amendment to claims 1 and 23 stating ‘the inferior and superior surfaces are configured to taper away from one another toward the first end along an entire length thereof from the recess to the first end when the locking mechanism is disposed *and fully distally inserted* in the bore...’ (emphasis added) is not supported by the original disclosure.” Applicant respectfully disagrees.

At the outset, Applicant notes that the claim language quoted by Examiner is only present in independent claim 1. Since the response to the office action dated November 23, 2007, independent claim 23 has recited “the inferior surface of the top portion and the superior surface of the bottom portion tapering away from one another toward the first terminal end along an entire length thereof between the recess and the first terminal end when the top and bottom portions are in the closed position; and axially aligned, concentric bores extending through the top and bottom portions at a location spaced apart from the recess, the bores being configured to receive a locking mechanism for locking the top and bottom portions in the closed position.” The amendment of claim 23 presented in the response to the office action dated August 5, 2009 added that the bores are configured to receive the locking mechanism for locking the top and bottom portions in the closed position “*when the locking mechanism is fully distally inserted through the bore.*”

Claims 1 and 23 satisfy the written description requirement at least because as clearly described for example in paragraph [0048], “the inferior surface 12i of the top portion 12 and the superior surface

14s of the bottom portion 14 can tapered away from one another [sic] toward the first ends 12t<sub>1</sub>, 14t<sub>1</sub> thereof, as shown in FIG. 1B,” reproduced below. Figure 1B shows the top and bottom portions 12, 14 in an open position. *See* published application, para. [0047]. Figure 1C, also reproduced below, shows the top and bottom portions 12, 14 in a closed position with the inferior and superior surfaces 12i, 14s tapering away from one another and with a locking mechanism 20 fully distally inserted through bores in the top and bottom portions 12, 14. *See id.*; para. [0050]. Applicant thus respectfully asserts that contrary to the Examiner argument, the original disclosure clearly describes in at least paragraphs [0047]-[0048] and [0050] and Figure 1C that when the locking mechanism is fully within the bore of the clamp member, the inferior and superior surfaces taper away from one another.



Accordingly, for at least these reasons, claims 1 and 23 comply with the written description requirement, and Applicant respectfully requests for the rejection to be withdrawn.

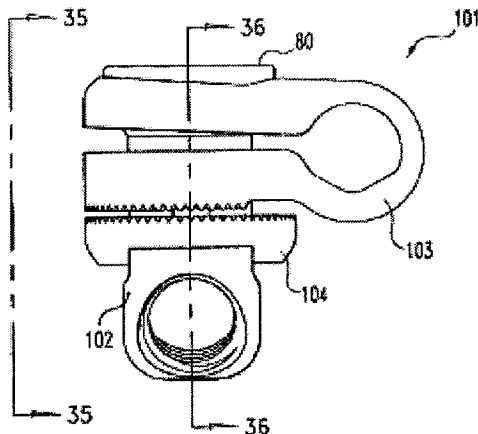
#### ***Rejections Pursuant to 35 U.S.C. § 102***

Claims 1, 4-6, 13-15, and 22-24 are rejected pursuant to 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,872,209 (“Morrison”). Applicant respectfully disagrees.

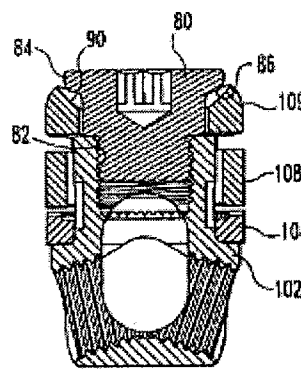
In relevant part, independent claim 1 recites that the inferior and superior surfaces are configured to taper away from one another toward the first end along an entire length thereof from the recess to the first end *when the locking mechanism is disposed and fully distally inserted in the bore* extending through the top and bottom portions. Also in relevant part, independent claim 23 recites that the inferior surface of the top portion and the superior surface of the bottom portion tapering away from one another toward the first terminal end along an entire length thereof between the recess and the first terminal end when the top and bottom portions are in the closed position and that the bores are configured to receive a

locking mechanism for locking the top and bottom portions in the closed position *when the locking mechanism is fully distally inserted through the bores.*

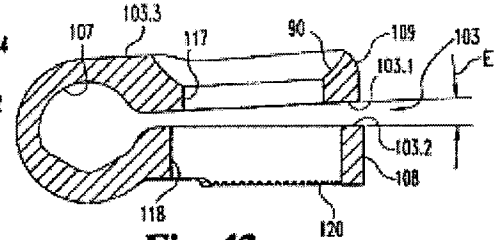
The Examiner argues on pages 3 and 6 of the Office Action that Figures 34, 36, and 42 of Morrison, reproduced below, show that inferior and superior surfaces of the opposing internal faces 103.1 and 103.2 taper away from one another when the screw 80 is “fully within the bore.” However, Morrison fails to disclose required features of claims 1 and 23.



**Fig. 34**



**Fig. 36**



**Fig. 42**

Claims 1 and 23 do not simply require that inferior and superior surfaces taper away from one another when the locking mechanism is “fully within the bore” as stated by the Examiner. Instead, the inferior and superior surfaces taper away from one another when the locking mechanism is “*fully distally inserted.*” Applicant does not dispute that the opposing internal faces 103.1 and 103.2 of Morrison “are non-parallel to each other when the clevis 103 is in a free, unassembled state.” Morrison, col. 8, lines 23-26. However, contrary to the Examiner’s assertion, Figures 34 and 36 do *not* show the screw 80 *fully distally inserted* in the eyes 117, 118 of the opposing internal faces 103.1 and 103.2 or that the opposing internal faces 103.1 and 103.2 taper away from one another when the screw 80 is *fully distally inserted* for at least two independent reasons. *See* Morrison, col. 8, lines 13-20.

First, Figure 36 shows that the curved shoulder 86 of the screw 80 is not tightened against the pocket 90 of the clevis 103. Morrison specifies that “[t]ightening of screw 80 *results in curved shoulder 86 bearing against pocket 90.* Subsequent tightening of bolt 80 results in a bending of ears 108 and 109 towards each other, which tightens bore 107 into three point contact with vertebral anchor B.” *Id.* at col.

7, line 67 to col. 8, line 4. (Emphasis added.) Thus, Figure 36, and hence Figure 34, do not show the screw 80 *fully distally inserted* in the eyes 117, 118 because the screw 80 is not distally advanced enough for the shoulder 86 to even be in contact with the pocket 90.

Second, Morrison explains that when the screw 80 is disposed and fully inserted in the eyes 117, 118, ridges 121 on the clevis 103 interlock with corresponding ridges 128 on the washer 104 to prevent rotational movement between the clevis 103 and the washer 104. *See* col. 6, lines 38-50; Figures 43-45 (illustrating ridges 128). Applicant notes that Morrison explains the interlocking of clevis ridges and washer ridges in a discussion of another disclosed embodiment shown in Figures 10-20, but Morrison specifically states that “[t]he use of a one-hundred prefix (1XX) before an element number (XX) refers to an element that is the same as the non-prefixed element number, except for the differences shown and described.” *Id.* at col. 7, lines 48-51. Hence, the clevis ridges 121 and the washer ridges 128 are the same as the clevis ridges 21 and the washer ridges 28 of the previously described embodiment. Morrison does not provide any indication that the interlocking ridges 121, 128 of the clevis 103 and the washer 104 are any different from the ridges 21, 28 of the clevis 3 and the washer 4. Indeed, it is logical that the ridges 121, 128 interlock to prevent the previously mentioned undesired rotation. Thus, it is clear that Figures 34 and 36 do not show the screw 80 *fully distally inserted* in the eyes 117, 118 because the ridges 121, 128 are not in any contact with one another.

Further, there is no teaching or suggestion anywhere in Morrison that when the screw 80 is fully distally inserted in the eyes 117, 118, the opposing internal faces 103.1 and 103.2 taper away from each other as required by claims 1 and 23. Indeed, Morrison indicates the *opposite* for at least the two independent reasons discussed above. Morrison thus does not anticipate claims 1 and 23.

Claims 1 and 23, as well as claims 4-6, 13-15, 22, and 24 which depend therefrom, therefore distinguish over Morrison and represent allowable subject matter.

### ***Rejections Pursuant to 35 U.S.C. § 103***

Claims 16-19 and 24 are rejected pursuant to 35 U.S.C. § 103(a) as being obvious over Morrison. Applicant respectfully disagrees. As indicated above, Morrison fails to disclose claims 1 and 23. Accordingly, claims 16-19 and 24, which depend from claims 1 and 23 respectively, distinguish over Morrison and represent allowable subject matter.

***Conclusion***

Applicant submits that all claims are in condition for allowance, and allowance thereof is respectfully requested. The Examiner is encouraged to telephone the undersigned attorney for Applicant if such communication is deemed to expedite prosecution of this application.

No extension of time is believed to be due with this filing. In the event that a petition for an extension of time is required to be submitted at this time, Applicant hereby petitions under 37 CFR 1.136(a) for an extension of time for as many months as are required to ensure that the above-identified application does not become abandoned.

No fee is believed to be due with this filing. The Director is hereby authorized to charge any deficiency in the fees filed, asserted to be filed or which should have been filed herewith to our Deposit Account No. 141449, under Order No. 101896-242.

Dated: March 29, 2010

Respectfully submitted,

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